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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRITTANY LEE ZARAGOZA (10),
EDGAR OMAR HERRERA FARIAS
(16), and
MIGUEL REYES GARCIA (21),

Defendants.

4:15-CR-6049-EFS

Response to Defendant's Exception
to Preliminary Jury Instruction No. 5

Plaintiff, United States of America, by and through, Joseph H. Harrington, United States Attorney for the Eastern District of Washington, and Stephanie Van Marter and Caitlin Baunsgard, Assistant United States Attorneys for the Eastern District of Washington, submits the following response to the Defendant Farias' Exception to Preliminary Jury Instruction No. 5. (ECF. 979).

Count 1 of the Second Superseding Indictment states:

Beginning on a date unknown but by on or about January 2010 continuing

Response to Defendant's Exception to Preliminary Jury Instruction No. 5 - 1

1 until on or about December 6, 2016, in the Eastern District of Washington and
2 elsewhere, the Defendants, JESE DAVID CARILLO CASILLAS, ROSA
3 ARACELI GRANADOS (a.k.a. La China), ALEXIS JOEL GARCIA
4 PALOMINO, GABRIELA MENDOZA VASQUEZ, JULIO CESAR ROSALES
5 SAUCEDO, SALVADOR GUDINO CHAVEZ, ADAM BENJAMIN
6 GOLDRING, JUVENAL LANDA, ERICA MARIA SOLIS, EDGAR OMAR
7 HERRERA FARIAS (a.k.a. Burro), ALFREDO MAGANA GARIBAY (a.k.a.
8 Freddy), JUAN BRAVO ZAMBRANO, MARCIAL BRAVO ZAMBRANO,
9 MIGUEL REYES GARCIA, JAVIER CAMILO GOMEZ CALVILLO, JOSE
10 ADRIAN MENDOZA, and VERONICA ELVIRA CORTEZ, did knowingly and
11 intentionally combine, conspire, confederate and agree together with each other
12 and other persons, both known and unknown to the Grand Jury, to commit the
13 following offense against the United States, to wit: distribution of 500 grams or
14 more of a mixture or substance containing a detectable amount of
15 Methamphetamine, 5 kilograms or more of a mixture or substance containing a
16 detectable amount of Cocaine, 1 kilograms or more of a mixture or substance
17 containing a detectable amount of heroin and 400 grams or more of a mixture or
18 substance containing a detectable amount of N-phenyl-N Propanamide, all
19 Schedule II controlled substances, in violation of 21 U.S.C. § 841(a)(1),
20 (b)(1)(A)(i), (ii)(I), (vi), and (viii); all in violation of 21 U.S.C. § 846.

21 Relying upon *United States v. Arlt*, 252 F.3d 1032, 1036 (9th Cir. 2001).

22 Defendant Farias somehow claims that this is actually a general conspiracy charge based
23 upon the inclusion of the language highlighted above. To the contrary, as noted in *Arlt*,
24 the analysis is focused upon the offense to which the Defendant conspired to commit, not
25 presence of this introductory language, “[A]pplying the *Blockburger* test, we concluded
26 in that case that Congress intended separate punishments for the two offenses, because
27 the drug conspiracy required proof of an agreement to violate the drug laws, while the
28 general conspiracy charged in the indictment required an agreement concerning failure to
report currency. *Id.* (citing *United States v. Cuevas*, 847 F.2d 1417, 1429 (9th Cir.1988)).

1 In finding that a person can be convicted of *both* a 18 U.S.C. § 371 Conspiracy and
2 a 21 U.S.C. § 846, Drug Conspiracy, the Ninth Circuit further concluded, “[W]hen
3 applying the *Blockburger* test in a case in which a defendant is convicted under § 371, the
4 element that we must consider is not “any offense against the United States” but rather
5 the specific substantive offense that the defendant is alleged to have conspired to commit;
6 that substantive offense is designated in the count of the indictment charging the
7 defendant under § 371. *Id.*
8
9

10 Here, Defendant wholly ignores the specific substantive offense that Defendant
11 Farias is alleged to have conspired to commit. The preliminary instructions are therefore
12 accurate as it is not a § 371 Conspiracy but rather a 21 U.S.C. § 846 drug conspiracy, as
13 charged.
14

15 DATED this 9th day of October 2018.
16

17 Joseph H. Harrington
18 United States Attorney

19 *s/Stephanie Van Marter*
20 Stephanie Van Marter
21 Assistant United States Attorney

22 *s/Caitlin Baunsgard*
23 Caitlin Baunsgard
24 Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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s/Stephanie Van Marter
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